

SEE MODIFICATION OF STIPULATION ON LAST PAGE

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

In re:

YESHIVAH OHEL MOSHE *a/k/a*
YESHIVA OHEL MOSHE,

Debtor.

YESHIVAH OHEL MOSHE *a/k/a*
YESHIVA OHEL MOSHE,

Appellant,

v.

NY FIVE STAR EQUITY CORP.

Appellee.

Case No. 17-cv-03123

Hon. Brian M. Cogan

On appeal from:

Bankruptcy Case No. 16-43681 (ESS)

STIPULATION AND ORDER STAYING APPEAL

Yeshivah Ohel Moshe, as appellant (the “Appellant”), and NY Five Star Equity Corp. (the “Appellee” and together with the Appellant, the “Parties”), hereby stipulate and agree as follows (the “Stipulation”):

RECITALS

WHEREAS, on August 16, 2016 (the “Petition Date”), the Appellant filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court”);

WHEREAS, on September 1, 2016, the Appellant filed its Chapter 11 Plan and Disclosure Statement. Thereafter, on November 3, 2016, the Appellant filed its Amended Chapter 11 Plan and its Amended Disclosure Statement;

WHEREAS, on November 16, 2016, the Bankruptcy Court issued a Stipulation and Scheduling Order directing the Parties to file briefs on the issue of whether the Bankruptcy Code permits or prohibits the Appellant to reinstate its debt to the Appellee by curing the existing default at the non-default interest rate [Case No. 16-43681 (ESS), ECF No. 57];

WHEREAS, on January 12, 2017, February 2, 2017, March 3, 2017 and May 10, 2017, the Bankruptcy Court held hearings on the Amended Disclosure Statement.

WHEREAS, on May 11, 2017, the Bankruptcy Court issued a Memorandum Decision on the Adequacy of the Amended Disclosure Statement [Case No. 16-43681 (ESS), ECF No. 144] as well as an Order Denying Approval of the Amended Disclosure Statement (the “Order Denying Disclosure Statement Approval”) [Case No. 16-43681 (ESS), ECF No. 145], whereby the Bankruptcy Court denied approval of the Amended Disclosure Statement;

WHEREAS, on May 12, 2017, the Bankruptcy Court issued a Mediation Referral Order referring the Parties to mediation (the “Mediation”) pursuant to Rule 9019-1 of the Local Rules for the United States Bankruptcy Court for the Eastern District of New York [Case No. 16-43681 (ESS), ECF No. 146];

WHEREAS, on May 18, 2017, the Parties agreed to, and the Bankruptcy Court entered, a Stipulation and Mediation Order appointing the Honorable Louis H. Kornreich as mediator. A mediation session is scheduled for June 8, 2017 [Case No. 16-43681 (ESS), ECF No. 151];

WHEREAS, on May 22, 2017, the Appellant filed with the Bankruptcy Court its notice of appeal [Case No. 16-43681 (ESS), ECF No. 154] from the Order Denying Disclosure Statement Approval;

WHEREAS, on May 24, 2017, the appeal was docketed with this Court (the “Appeal”) [Case No. 1:17-cv-03123 (BMC), ECF No. 1];

WHEREAS, on May 24, 2017, this Court docketed an Order to Show Cause directing the Appellant to show cause why its appeal “should not be dismissed on the ground that the Order from which the appeal is taken is not an appealable Order”;

WHEREAS, on May 25, 2017, the Appellant filed a Motion for Leave to Appeal [Case No. 1:17-cv-03123 (BMC), ECF No. 2] (the “Motion for Leave”). Thereafter, this Court directed the Appellee to file a response to the Motion for Leave by June 5, 2017.

NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE as follows:

STIPULATION

1. The above Recitals are true and correct and are incorporated herein by reference.

2. To save expenses, and in furtherance of fostering a potential resolution of this matter, the Parties have requested that this Court stay the Appeal and all proceedings therein, including the Appellee's time to respond to the Motion for Leave, until the earlier of (i) notice to this Court from the Parties that the Mediation has concluded without a successful resolution, or (ii) notice to this Court from the Parties that they have reached a resolution of this matter.

3. In the event the Parties reach a resolution of this matter, the Appellant shall file with this Court a motion, with notice to all parties, seeking voluntary dismissal of the Appeal consistent with Rule 42 of the Federal Rules of Appellate Procedure.

4. In the event the Parties are unable to reach a resolution of this matter, the Appellee shall have fourteen (14) days from the date notice is given to this Court pursuant to paragraph 2 of this Stipulation to file a response to the Motion for Leave.

(Signature page follows)

Dated: May 30, 2017
New York, New York

PRYOR CASHMAN LLP

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Dated: May 30, 2017
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Attorney for Appellant Yeshivah Ohel Moshe

SO ORDERED^{*} by the Court this 30th day of May, 2017

Honorable Brian M. Cogan
United States District Court Judge

*The terms of this stipulation are approved subject to this amendment: The appeal shall be administratively closed, but may be reopened on motion of either party that (a) the matter has settled; or (b) that the parties have agreed to terminate, or the mediator has directed, or the Bankruptcy Court has ordered, termination of the mediation under Local Bankruptcy Rule 9019-1. Notice of either (a) or (b) must be given to this Court within 30 days of its occurrence or the right to reopen this appeal shall be deemed waived.